Ong Hock Sim J. (delivering oral judgment): The appellant in this case was convicted on his own plea to the following charge and sentenced to 9 months imprisonment:—

"That you on the 1st day of November, 1968 at 5.00 p.m. at No. 443, Beach Street, Penang, in the district of George Town, in the State of Penang, attempted to put one Seah Choon Hock (m) in fear of injury, to wit, hurt to his person, in order to the committing of extortion, and that you have thereby committed an offence punishable under section 385 of the Penal Code."

The appellant appeals to the court to set aside the sentence and impose a fine as he would lose his job if he were sentenced to imprisonment.

I regret that if I were to interfere with the discretion of the learned magistrate, there would be chaos in the lower courts so far as exercising the discretion in the matter of punishment is concerned. I cannot say the sentence imposed by the learned magistrate is manifestly excessive. In the circumstances I must therefore dismiss the appeal.

Appeal dismissed.

YEO HOCK HENG v. PUBLIC PROSECUTOR

[A.Cr.J. (Ong Hock Sim J.) February 7, 1969]
[Penang — Criminal Appeal No. 6 of 1969]

Criminal Law and Procedure — Sentence — Assaulting public servant — Fine of $80 held inadequate.

Prevention of Crime Ordinance, 1959, s. 3.

Penal Code, s. 353.

A fine of $80 for an offence of assaulting a public servant in the execution of his duty is inappropriate.

CRIMINAL APPEAL.

Baldev Singh Bhar for the appellant.

K.C. Vohrah (Deputy Public Prosecutor) for Public Prosecutor.

Ong Hock Sim J. (delivering oral judgment): The appellant was convicted on a charge of assaulting a public servant with intent to deter the public servant from discharging his duty, an offence punishable under section 353 of the Penal Code, and was fined $80 in default 3 weeks' imprisonment by the learned magistrate.

There are no grounds for holding that the arrest was illegal in view of section 3 of the Prevention of Crime Ordinance No. 13 of 1959, which empowers a police officer to arrest without a warrant any person wanted for the purpose of an inquiry. In the circumstances the cases cited by the appellant's counsel are not applicable and I propose to disregard them.

There may have been a conflict of evidence as to how the injuries came about. The learned magistrate has heard the two different versions and she has come to a finding of fact. The appellant denies having slapped the complainant but there is medical evidence to support that the complainant had suffered injuries.

A fine of $80 for an offence of assaulting a public servant in the execution of his duty is, to my mind, clearly inappropriate. I therefore set aside the fine and substitute therefor a sentence of 6 months' imprisonment with effect from today.

Sentenced of fine set aside; sentence of imprisonment imposed.

SERI & ANOR. v. ORIENTAL FIRE & GENERAL INSURANCE CO. LTD.

[O.C.J. (Choor Singh J.) February 8, 1969]
[Singapore — Suit No. 1206 of 1966]

Insurance — Motor insurance — Use of vehicle for carriage of goods other than samples — Occupation stated in policy as clerk — Insured using vehicle for carriage of goods in connection with catering business — Insurers not liable under policy.

The plaintiffs obtained as damages and costs the sum of $24,998 in an action against a driver of a car whose negligent driving caused the death of a person of whose estate the plaintiffs were the administrators. In this action the plaintiffs claimed that sum from the defendant company as insurers. The defendant company repudiated liability on the ground that the defendant company did not cover use of the vehicle for carriage of goods other than samples in connection with any trade or business and that at the time of the accident the car was being used for carriage of goods other than samples.

The driver signed a proposal form describing himself as a clerk when he was in fact running a catering business during the day and in charge of a bar in the evenings. The catering business consisted of collecting cakes from several bakeries and selling and delivering them to various canteens and coffee shops. The defendant company agreed that the onus of proving that the car was being used at the time of the accident for the carriage of goods other than samples was on it and alleged that at the material time the driver was carrying cakes on the rear seat of the car thus using the car for the carriage of goods in connection with his catering business. The plaintiffs denied this allegation.

Held, dismissing the action: (1) the court should always strictly construe and enforce the conditions of user of a car in an insurance policy. *Jones* v. *Welsh Insurance Corporation Ltd.*(1) considered;

(2) in this case the evidence clearly showed that at the time of the accident the car was being used not in connection with the driver's declared business of a clerk, but for the carriage of goods in connection with his catering business.

Case referred to:—

(1) *Jones* v. *Welsh Insurance Corporation Ltd.* [1937] 4 All E.R. 149.

CIVIL SUIT.

J. Cashin (*T.G. Dunbar* with him) for the plaintiffs.

Tan Tee Seng for the defendants.